

IN THE SUPREME COURT OF THE UNITED STATES

HENRY TROY WADE,
Petitioner,

V.

UNITED STATES OF AMERICA,
Respondent.

APPLICATION TO VACATE OR MODIFY ORDER DENYING STAY
(Supreme Court Rule 22)

TO THE HONORABLE CLARENCE THOMAS, Associate Justice of the Supreme Court
of the United States, and Circuit Justice for the 11th Circuit:

Pursuant to Supreme Court Rule 22(3), Applicant respectfully submits this
Application to Vacate or Modify the Order denying a stay previously entered on January
16, 2026, or, in the alternative, to refer this Application to the full Court's consideration
pursuant to Supreme Court Rule 22(4).

I. PROCEDURAL BACKGROUND

1. On December 31, 2026, Applicant filed an application for a stay pending disposition of the Applicant's petition for a *writ of certiorari*.
2. The stay was denied on January 15, 2026, by Justice Thomas.
3. Relief was sought below and denied, as required by Rule 23(3).
4. Since the denial of the stay, intervening circumstances and/or substantial grounds not previously presented have arisen, warranting reconsideration under Rule 22(3).

II. INTERVENING CIRCUMSTANCES OR NEW GROUNDS (RULE 22(3))

This renewed Application is based on intervening developments and/or previously unavailable grounds. Specifically, it's the Applicant's understanding that Justice Thomas denied the Applicant's Motion due to an incomplete record. According to the clerk's office, the Applicant's application, which referenced his petition for a *writ of certiorari* and the accompanying Appendices, (Volume 1 & 2) was missing Volume 1 and therefore, the request did not provide a complete record for Justice Thomas to review. However, the Applicant has records showing the missing volume was not within his control. Exhibit A are the U.S. Postal Receipts showing that all the documents were mailed directly to the Court. Exhibit B are the hand-delivery receipts that shows the Applicant physically hand delivered the missing Volume 1 to the Court on January 12, 2026. According to the Court's post office, their records show that the Clerk's office received the missing volume the same day.¹

At the time of this filing, again based on the limited information we can obtain, the missing Appendix, Volume 1, is now docketed and is part of the record. The Applicant humbly asks Justice Thomas to re-review the Applicant's Motion for Stay now that the record is complete.

III. STANDARD FOR A STAY RE-URGED (RULE 23)

¹ The Applicant does not control how the clerk's office delivers documents to the Court. Therefore, to deny his Original Application for reasons that are beyond the Applicant's control is patently unfair. Neither the Applicant or his counsel can figure out how to by-pass the Post and Clerk's offices and deliver the complete Application, Petition and Appendices, directly into the Court's hands.

This application to vacate or modify the order denying the applicant's original stay request, along with the original stay application, is supported by his petition for a *writ* of *certiorari* and its appendices (Volumes 1 and 2). The application, original motion for stay, petition, and appendices (Volumes 1 and 2) should be reviewed together, as the petition and appendices provide the documentation and record excerpts supporting the stay request.

Additionally, according to Rule 23, the grounds for the original application for stay must be re-urged in any subsequent application for re-urging. Therefore, counsel re-urges the grounds raised in the original application for stay below.

A stay pending review is appropriate where the applicant demonstrates: (1) a reasonable probability that *certiorari* will be granted; (2) a fair prospect that the judgment below will be reversed; (3) irreparable harm absent a stay; and (4) that the balance of equities favors relief. All four factors are satisfied here.

1. Likelihood of *Certiorari* and Success on the Merits

The Petition presents multiple preserved structural constitutional questions of exceptional national importance, including:

- a. constructive amendment of an indictment in violation of *Stirone v. United States*, 361 U.S. 212, 80 S.Ct. 270, 4 L.Ed.2d 252, (1960) and *Ex parte Bain*, 121 U.S. 1, 7 S.Ct. 781, 30 L.Ed. 849 (1887) *overruled in part on other grounds by United States v. Cotton*, 535 U.S. 625, 629, 122 S. Ct. 1781, 1784, 152 L. Ed. 2d 860 (2002),;
- b. removal of essential elements from the jury under *United States v. Gaudin*, 515 U.S. 506, 115 S.Ct. 2310, 132 L.Ed.2d 444, (1995) and *Sullivan v. Louisiana*, 508 U.S. 275, 113 S.Ct. 2078, 124 L.Ed.2d 182 (1993);
- c. an indictment obtained through materially inaccurate grand-jury information contrary to *Mooney v. Holohan*, 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935) and *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959).

- d. suppression and rolling disclosure of attribution-critical evidence in violation of *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972), and *Kyles v. Whitley*, 514 U.S. 419, 426, 115 S. Ct. 1555, 1562, 131 L. Ed. 2d 490 (1995); and
- e. systemic breakdowns in digital-authorship prosecutions documented by federal oversight bodies.

These are pure questions of law, fully preserved, record-complete, and recurring nationwide. The Petition satisfies Supreme Court Rules 10(a), 10(c), and 11, establishing a reasonable probability of certiorari and a fair prospect of success on the merits.

2. Irreparable Harm (Independent and Compounding)

Sentencing under a structurally tainted prosecution is irreparable. Once sentencing occurs, Applicant will suffer:

- a. immediate incarceration exposure;
- b. reversible collateral legal consequences;
- c. permanent reputational and professional harm; and
- d. loss of meaningful appellate posture.

Structural constitutional errors “infect the entire framework within which the trial proceeds” and are not cured by later review. *Sullivan v. Louisiana*, 508 U.S. 275, 281, 113 S. Ct. 2078, 2082, 124 L. Ed. 2d 182 (1993).

3. Independent Irreparable Harm: Automatic Loss of Professional Licensure

Sentencing will trigger the automatic suspension or revocation of seventeen (17) active, state-issued professional construction and contracting licenses held by Applicant. That loss will:

- a. permanently terminate Applicant's ability to work in his trained profession;
- b. destroy existing business relationships, bonding, and insurance eligibility; foreclose future licensure reinstatement, which is discretionary and uncertain; and
- c. impose cascading regulatory and economic consequences that cannot be undone even if certiorari is later granted and the conviction vacated.

Loss of professional licensure constitutes classic irreparable harm. No later appellate relief can restore licenses forfeited by operation of law following sentencing. This harm is concrete, non-speculative, independent of the merits, and alone warrants a stay.

4. Independent Irreparable Harm: Prosecutorial Conflict of Interest

- a. the original filed Appendix I-1, establishes that the Assistant United States Attorney prosecuting Applicant simultaneously served as a material witness adverse to Applicant in an unrelated civil proceeding. This dual role creates:
- b. an appearance of partiality incompatible with prosecutorial neutrality;
- c. a direct conflict between sovereign obligations and personal adversarial interests; and
- d. a structural integrity defect under *Young v. United States ex rel. Vuitton*.

Allowing sentencing to proceed under a prosecution infected by an unresolved conflict causes irreparable harm. No later vacatur can restore the legitimacy of a sentence imposed by a conflicted sovereign advocate. This harm exists independently of the merits and independently warrants a stay.

5. Digital-Evidence Degradation and ADA-Based Barriers

The record reflects missing, overwritten, or non-preserved SBA identity-verification metadata. Delay permanently degrades any ability to reconstruct authorship evidence central to the case.

The Applicant's severe visual impairment, combined with the Government's failure to provide ADA-compliant access to electronic records, further magnifies irreparable harm absent a stay. Time only worsens both evidentiary loss and disability-based barriers.

6. Balance of Equities

The equities overwhelmingly favor a stay:

- a. the Government suffers no prejudice from a temporary pause;
- b. Applicant faces permanent, irreversible consequences if sentencing proceeds; and
- c. the requested relief preserves the status quo while this Court considers threshold constitutional questions.

7. Public Interest

The public interest favors:

- a. integrity of federal criminal prosecutions;
- b. enforcement of prosecutorial neutrality and conflict-free advocacy;
- c. uniform constitutional standards governing digital-evidence prosecutions; and
- d. avoiding sentencing under a cloud of unresolved structural constitutional error.

Proceeding to sentencing despite documented structural violations and an unresolved prosecutorial conflict would undermine public confidence in the criminal justice system. Overall, this is precisely the circumstance for which Supreme Court Rules 11 and 21 exist. The Petition raises grave constitutional questions of national importance. Sentencing would impose irreparable harm, entrench structural violations, and compromise public confidence.

For these reasons, the stay should be granted.

IV. CONCLUSION

The Applicant respectfully requests that the Court vacate or modify the order denying a stay, or in the alternative refer this Application to the full Court for consideration; and after a full review the Applicant's request, in conjunction with his petition and appendices, grant a stay pending disposition of the petition for a *writ of certiorari*.

Respectfully submitted,

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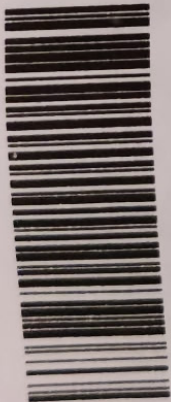
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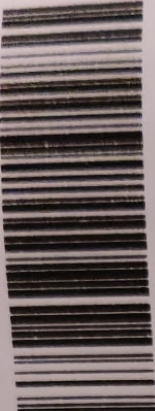
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